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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

DOC NO
REC'D/FILED

NEIL GAIMAN and
MARVELS AND MIRACLES, LLC,

Plaintiffs,

v.

TODD MCFARLANE,
TODD MCFARLANE PRODUCTIONS, INC.,
TMP INTERNATIONAL, INC., MCFARLANE
WORLDWIDE, INC., and
IMAGE COMICS, INC.,

Defendants.

2002 MAR -1 AM 11:38

J W SKOGEWITZ
CLERK US DIST COURT
WD OF WI
Case No. 02 C 0048 S

**PRELIMINARY PRETRIAL REPORT OF DEFENDANTS TODD MCFARLANE,
TODD MCFARLANE PRODUCTIONS, INC., TMP INTERNATIONAL, INC. AND
MCFARLANE WORLDWIDE, INC.**

Defendants Todd McFarlane, Todd McFarlane Productions, Inc., TMP International, Inc. and McFarlane Worldwide, Inc., (“the McFarlane Defendants”) by their attorneys, LaFollette Godfrey & Kahn, submit the following preliminary pretrial report pursuant to Rule 26, Fed. R. Civ. Proc., and the court’s order on preliminary pretrial conferences:

1. Nature of the case. This case arises out of a dispute between well-known comic book authors over intellectual property rights and compensation for certain characters in the popular *Spawn* comic book series and certain rights to another comic book series, *Miracleman*. The plaintiffs assert that the defendants have violated plaintiff Neil Gaiman’s “moral rights as a creator” in several issues of *Spawn*, violated his alleged intellectual property rights in various *Spawn* comic book characters, breached a contract with him regarding those property rights as well as property rights to the *Miracleman* comic, and defrauded him by inducing him to enter

into that contract. In addition, the plaintiffs allege that the defendants have violated the Lanham Act and Wisconsin false advertising law by “reverse palming off” the *Spawn* comic book characters as their own and are estopped from avoiding the terms of the parties’ agreements. The plaintiffs seek declaratory relief regarding the parties’ respective rights and obligations as well as damages and costs.

Although the McFarlane Defendants have not yet filed their responsive pleadings answering these allegations, they will deny that they have breached any of the plaintiffs’ intellectual property or contract rights and will affirmatively allege, among other things, that most of the plaintiffs’ claims are barred by applicable statutes of limitation and basic principles of copyright and trademark law. In addition, they will seek a declaration as to their own rights in the intellectual property in dispute, a declaration invalidating Mr. Gaiman’s copyright registrations and damages arising out of payments made to Mr. Gaiman under false pretenses.

2. Jurisdictional issues. The McFarlane Defendants agree that this court has jurisdiction over this dispute and, for purposes of this suit only, over the McFarlane Defendants except for Mr. McFarlane, who has no contacts with the state of Wisconsin. In addition, except for the foregoing, the McFarlane Defendants believe this dispute is properly venued.

3. Amendments to pleadings. The pleadings for this matter have not been completed. In particular, the McFarlane Defendants’ responsive pleading is due March 4, 2002 under a stipulation and order signed by the court. In addition, the responsive pleading of defendant Image Comics, Inc. is due March 12, 2002 by stipulation and order of the court. The McFarlane Defendants request a reasonable amount of time for the parties to amend pleadings after March 12, 2002.

4. Pending or contemplated motions. No motions are pending before the court. The McFarlane Defendants intend to pursue a Rule 12(b) or 12(c), Fed. R. Civ. Proc., motion to

dismiss the plaintiff's intellectual property claims on statutes of limitations and other grounds.

In addition, if the case remains pending in whole or in part, the McFarlane Defendants expect to pursue a summary judgment motion after discovery has been completed.

5. Date for completion of discovery. The McFarlane Defendants believe that discovery can be completed by August 23, 2002. The McFarlane Defendants do not believe that discovery should be conducted in phases or should be limited to or focused upon particular issues. Discovery should be permitted to the fullest extent permitted by the Federal Rules of Civil Procedure.

6. Date for final pretrial conference and trial. The defendants propose that the final pretrial conference be held on September 20, 2002 and that the trial commence on or before September 30, 2002.

7. Initial Disclosures. The McFarlane Defendants propose that the parties exchange initial disclosures pursuant to Rule 26(a)(1), Fed. R. Civ. Proc., on or before April 5, 2002.

Dated: March 1, 2002.

LA FOLLETTE GODFREY & KAHN

By: 

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Attorneys for Todd McFarlane, Todd McFarlane
Productions, Inc., IMP International, Inc. and
McFarlane Worldwide, Inc.

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CERTIFICATE OF SERVICE

Todd G. Smith certifies that on Friday, March 1, 2002, a true and correct copy of the "Preliminary Pretrial Report of Defendants Todd McFarlane, Todd McFarlane Productions, Inc., TMP International, Inc. and McFarlane Worldwide, Inc." was hand-delivered, faxed and mailed, first class, postage prepaid to the following:

Hand-Delivered: Jeffrey A. Simmons
Foley & Lardner
150 East Gilman Street
Madison, WI 53703

Facsimile and Mail: R. Scott Feldmann
Brobeck, Phleger & Harrison, LLP
38 Technology Drive
Irvine, CA 92618

Dated: March 1, 2002.



Todd G. Smith